

12 JAN 1983

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Record Validation Officer

FROM:

EXTENSION

NO.

Chief, Administrative Law Division
OGC 7C40 HDQS.

DATE

6 January 1983

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. General Counsel

0-3:

If this meets with your approval, I will send to Regulations Control for the normal processing and coordination.

2.

3. ~~XXX~~ Executive Director

4.

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15.

Yes - lets do it. I have alerted the DDCE and DD's to the concept.

JAN 14 10 42 AM '83

COM. STAFF

OGC 83-00153
6 January 1983

MEMORANDUM FOR: Executive Director

STAT FROM:

Chief, Administrative Law Division/OGC

SUBJECT: Selection of an Agency Witness Able to Testify
About All Agency Records Systems

1. The Wilson case has highlighted a problem which has been with the Agency for some years, that is providing an appropriate Agency witness to testify about the results of Agency records searches. The current system of segregating and compartmenting records systems while useful from the security point of view puts us at a distinct disadvantage in litigation. In many cases, it is necessary for the Agency to produce, at a minimum, witnesses from the Directorate of Operations, and the Offices of Personnel and Security to testify about Agency records. In other cases which involve additional records systems, even more witnesses may be required. Not only does this expose a number of Agency employees to cross-examination, but the need for each individual to limit his testimony to the records system for which he is responsible presents a very disjointed and confusing case to the jury and allows opposing counsel to exploit apparent inconsistencies in the testimony of the various Agency personnel.

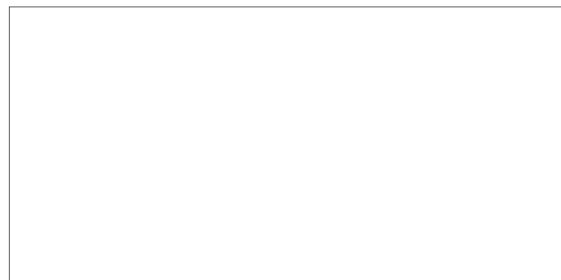
2. Most other government agencies can avoid this problem because they have a "custodian of records" to testify about that agency's records search. Consequently, they are not required to differentiate between records systems within the agency but need only to provide testimony about the search and its results.

3. It is possible for CIA to achieve most, if not all, of the benefits that other agencies obtain through use of a "custodian of records" without any compromise of the "need-to-know" principle or erosion of compartmentation. This can be done by amending our regulations to expressly permit the Executive Director to designate a Records Validation Officer (RVO) who would be fully briefed on Agency records systems and would be empowered to initiate an Agency records search in instances where testimony about Agency records may be required. It would be our recommendation that there be one or two individuals designated as RVOs, but our proposal would have the flexibility to permit you to appoint other individuals as RVOs in the unusual case.

4. The RVO would not be a records czar who would automatically have access to all Agency records systems or Agency records on all subjects. Instead, you would issue to each RVO a document empowering him to have access to all Agency records relevant to particular legal matters. This is clearly consistent with the "need-to-know" principle and would limit the RVOs access to only that information which he needs in order to perform his duties with respect to a particular legal matter. The individual(s) selected as an RVO(s) should be generally knowledgeable about Agency operational activities, articulate, and not easily rattled by hostile cross-examination. If the individual had a background in records management, that would be an advantage; but, if not, an individual who had the qualities which would make him a good witness would have to be trained and indoctrinated so that he would have the requisite familiarity with the various Agency records systems to be qualified as an expert witness and to withstand cross-examination:

5. The following change in Agency regulations to implement this proposal is suggested.

STAT



Records Validation Officer

1. General. This regulation sets forth the basic policy and framework for the designation of Records Validation Officer(s) (RVO) to act as the designated Agency official to testify or execute affidavits concerning Agency records and Agency records searches. As specified in this regulation, an RVO designated by the Executive Director of the Agency (EXDIR) will have access to all Agency records on any subject relevant to any litigation or legal matter within the scope of his responsibilities under the designation.

2. Designation of Records Validation Officer. An RVO may be designated by the EXDIR if he determines that such action would facilitate the handling of any litigation or legal matter. The designated RVO will ensure that all Agency records of actual or potential relevance with respect to such legal matters are located, identified and preserved in a timely and effective fashion. To achieve this end, the designated RVO is authorized to require appropriate components to locate, identify, and preserve for the General Counsel all such records, including the records responsive or relevant to any order or request of any court, the Department of Justice or appropriate law enforcement agency. The authority of the designated RVO will extend to all responsive records or records indices, in whatever form, in the possession or custody of the Agency. Though the designated RVO is empowered to task appropriate Agency personnel to assist him in carrying out his responsibilities, to the maximum extent feasible, the RVO will exercise his authority through the senior records management official of each Directorate or Independent Office. The RVO will be fully briefed on Agency records systems at the time of his designation and thereafter as the need arises.

3. Responsibilities.

a. Executive Director. The EXDIR is responsible for designating, in his discretion, one or more Agency personnel to be the RVO(s) responsible for conducting records searches regarding particular legal matters, such as an order or request of any court, the Department of Justice or appropriate law enforcement agency, and for providing to the General Counsel all responsive or relevant records. Any RVO designation will be in writing, will specify the litigation or legal matter for which the RVO is responsible, and may be terminated when

the EXDIR determines that such a designation is no longer necessary. The EXDIR will resolve any questions regarding the extent of the RVO's authority or need to have access to any particular Agency records or information.

b. Agency Records Management Officials. Agency records management officials and other Agency officials having possession or custody of Agency records will conduct, at the direction of the designated RVO, any records search for, or identify, segregate, or safeguard any Agency records specified by the RVO.

c. General Counsel. The General Counsel will provide legal advice, guidance and direction to the RVO.

4. Delegation of Authority from the Director of Central Intelligence. The Director of Central Intelligence (DCI) hereby delegates to the EXDIR all authorities and responsibilities that are necessary and proper for the EXDIR to exercise in the designation of RVOs or to otherwise implement this regulation. The DCI also hereby authorizes the EXDIR to redelegate to the designated RVOs such authorities and responsibilities that are necessary and proper for the designated RVOs to carry out their duties in accordance with this regulation. The DCI also hereby delegates to the General Counsel the authorities necessary and proper for the General Counsel's execution of the responsibilities set forth in this regulation. Nothing in this regulation shall preclude the DCI from exercising the authorities and responsibilities which the DCI has delegated in this paragraph.